

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ANDREW BOBECK
4226 Tisbury Lane
Hamburg, NY 14075

Plaintiff,

v.

SUMMONS

BUFFALO PUBLIC SCHOOLS
712 City Hall
Buffalo, NY 14202

Index No.:

Defendant.

To the above named defendant:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorneys a verified answer to the verified complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: August 14, 2019



Frank M. Bogulski, Esq.
Attorney for Plaintiff
Andrew Bobeck
286 Delaware Avenue, Suite B
Buffalo, NY 14202
(716) 649-0090

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ANDREW BOBECK
4426 Tisbury Lane
Hamburg, NY 14075

Plaintiff,

v.

COMPLAINT

BUFFALO PUBLIC SCHOOLS
712 City Hall
Buffalo, NY 14202

Index No.:

Defendant.

Plaintiff, ANDREW BOBECK, by and through his attorney, Frank M. Bogulski, Esq. brings this Complaint against the Defendant and alleges that at all times hereinafter mentioned:

1. Plaintiff Andrew Bobeck is a resident of the Town of Hamburg, County of Erie, State of New York.
2. Upon information and belief, Defendant Buffalo Public Schools is located within the County of Erie, State of New York.
3. From 1980 to 1982, when Plaintiff was fourteen and fifteen (14-15) years old, he attended school with the Defendant.
4. During the time of the allegations more fully described herein, a science instructor who went by the name of Robert Sewast, was employed as a teacher by the Defendant.
5. Through his position for the Defendant, Mr. Sewast was put in direct contact with the Plaintiff. Robert Sewast used the power bestowed upon him by the Defendant to sexually abuse and harass the Plaintiff.
6. Plaintiff was sent to study hall, class, tutoring, after school activities, and summer school with the Mr. Sewast by the Defendant, placing the Plaintiff in one-on-one contact with a pedophile.
7. From 1980 to 1982, Mr. Sewast sexually abused the Plaintiff for approximately two (2) years, approximately five (5) times a week.
8. Mr. Sewast forcibly touched the Plaintiff without his consent and exposed himself to the Plaintiff.
9. At all times herein, Mr. Sewast was under the direct supervision and control of the Defendant.

10. The Defendant knew or should have known the inappropriate and unlawful sexual activities of Mr. Sewast against the Plaintiff.
11. Defendant knowingly condoned and/or covered up Mr. Sewast's inappropriate and unlawful sexual acts against the Plaintiff.
12. Defendant had the responsibility to supervise and/or direct the teachers working under their authority, and specifically, had a duty not to aid Mr. Sewast in his unlawful sexual acts by consistently placing a minor, such as the Plaintiff at the time of the abuse, under his direct and sole control.
13. Defendant violated New York State Social services Law §413 and §420, which requires school officials and teachers to report suspected cases of child abuse and impose a liability for failure to report.
14. Plaintiff suffered both physical and psychological injuries and damages as a result of Mr. Sewast's actions, as well as other damages related to the incident herein.
15. As a direct result of the Defendant's conduct described herein, Plaintiff suffered and continues to suffer both to his body and mind, severe and permanent emotional distress that has manifested itself in many negative ways throughout his life.
16. Plaintiff was prevented, continues to be prevented, and will be prevented from performing his normal daily activities and obtaining the full enjoyment of life as a result of the abuse he has suffered.
17. As a result of the damages described herein, Plaintiff has incurred and continues to incur medical expenses related to counseling, therapy, and treatment, along with loss earnings.

**AS FOR THE FIRST CAUSE OF ACTION:
NEGLIGENCE**

18. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "18" above as if more set forth herein.
19. The aforesaid incidents and injuries as a result of and were proximately caused by the unlawful conduct of Mr. Sewast.
20. Defendant owed a duty to Plaintiff to maintain a reasonably safe environment while he was entrusted into its care.
21. Defendant breached these duties, and as a result of the breach of care of the Defendant and the Defendant's other negligence, Plaintiff sustained the injuries, losses, and damages more fully described above without any negligence on the Plaintiff contributing thereto.

22. Accordingly, Plaintiff demands judgment against the Defendant on its first cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE SECOND CAUSE OF ACTION:
RESPONDEAT SUPERIOR**

23. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "23" above as if more set forth herein.
24. Defendant's employee within the scope of employment/service sexually assaulted the Plaintiff.
25. Plaintiff sustained injuries, losses, and damages more fully described above as a direct result of the conduct of Defendant's employment of Mr. Sewast.
26. Mr. Sewast used the power and authority conferred upon him by the Defendant while doing the acts that caused the injuries alleged herein.
27. It was foreseeable that Mr. Sewast may exercise the power and authority the Defendant conferred upon him by engaging in illegal, careless, reckless, and/or other injury-causing conduct.
28. Therefore, the conduct of Mr. Sewast is incident to his employment with the Defendant so as to be attributable to the Defendant.
29. As a direct result of the Defendant's malfeasance and nonfeasance, Plaintiff was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life, and has incurred and will continue to incur expenses for medical and psychological treatment.
30. Accordingly, Plaintiff demands judgment against the Defendant on its second cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE THIRD CAUSE OF ACTION:
NEGLIGENT HIRING, RETENTION AND SUPERVISION**

31. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "30" above as if more set forth herein.
32. Mr. Sewast, whose conduct caused Plaintiff's injuries, was responsible for ensuring the mental, physical, and emotional of the Plaintiff.
33. Mr. Sewast was unfit for employment based on the nature of the job and the likelihood that an unfit employee would cause harm to others.
34. Defendant's hiring of Mr. Sewast caused the Plaintiff's injuries.
35. By accepting Plaintiff as a student and holding out the Defendant's establishment to be a reasonably safe environment for the growth and development of children, Defendant entered into an express and/or implied duty to provide a reasonably safe environment for Plaintiff.
36. At the time of the subject incidents, Defendant had actual or constructive knowledge of Mr. Sewast's unfitness responsible for Plaintiff's injuries.
37. Defendant's knowledge made the harm and injuries to Plaintiff foreseeable.
38. Accordingly, Plaintiff demands judgment against the Defendant on its third cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE FOURTH CAUSE OF ACTION:
BREACH OF FIDUCIARY DUTY**

39. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "38" above as if more set forth herein.
40. Through his positions in service to the Defendants, Mr. Sewast was put in direct contact with Plaintiff, then a minor student. Specifically, Mr. Sewast was assigned to the instruction of the Plaintiff under the Defendant. It was under these conditions that the Plaintiff came under the direct control and authority of Mr. Sewast, who used his position of authority and trust over the Plaintiff to sexually abuse and harass him.
41. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and the Defendant.

42. Pursuant to their fiduciary relationship, Defendant was entrusted with the well-being, care, and safety of Plaintiff. They also assumed a duty to act in the best interests of the Plaintiff.
43. Defendant breached its fiduciary duty as their actions were reckless and taken in a manner that disregarded the rights and safety of the Plaintiff.
44. Accordingly, Plaintiff demands judgment against the Defendants on its fourth cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE FIFTH CAUSE OF ACTION:
BREACH OF NON-DELEGABLE DUTY**

45. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "44" above as if more set forth herein.
46. Plaintiff was a minor when placed in the care of the Defendant. Defendant was to provide a safe environment for education and guidance.
47. This was a non-delegable duty of trust between the Plaintiff and Defendant.
48. Defendant was in the best position to prevent Plaintiff's abuse. Defendant was in the best position to learn of Mr. Sewast's repeated abuse of Plaintiff and stop it.
49. Because Plaintiff was sexually abused as a student, Defendant breached its non-delegable duty to Plaintiff.
50. At all times material hereto Mr. Sewast was under the direct supervision, employment and/or control of the Defendant.
51. Accordingly, Plaintiff demands judgment against the Defendant on its fifth cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE SIXTH CAUSE OF ACTION:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

52. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "51" above as if more set forth herein.
53. As described above, Defendant's actions were negligent and grossly negligent.
54. Defendant's actions endangered Plaintiff's safety and caused him to fear for his own safety.
55. As a direct and proximate result of Defendant's actions, Plaintiff suffered the severe injuries and damages described herein, including but not limited to mental and emotional distress.
56. Accordingly, Plaintiff demands judgment against the Defendant on its sixth cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE SEVENTH CAUSE OF ACTION:
BREACH OF DUTY *in Loco Parentis***

57. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "56" above as if more set forth herein.
58. Plaintiff was a minor when his parents entrusted to the control and supervision of the Defendants for the Plaintiff's education. Defendant owed a duty to students entrusted to them, like the Plaintiff, to adequately supervise and care for them to prevent injuries to their students.
59. Defendants breached this duty as they were reckless and negligent by disregarding the rights and safety of the Plaintiff.
60. As a direct result of the Defendant's conduct, Plaintiff suffered injuries and damages described herein.
61. Accordingly, Plaintiff demands judgment against the Defendants on its seventh cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

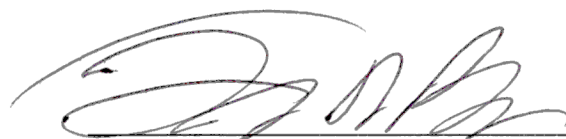
**AS FOR THE EIGHTH CAUSE OF ACTION:
BREACH OF STATUTORY DUTY TO REPORT ABUSE UNDER SOCIAL SERVICE
LAW §§413, 420**

62. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "61" above as if more set forth herein.
63. Pursuant to New York State Social Service Law §§413 and 420, Defendant had a statutory duty to report reasonable suspicion of abuse of children in their care.
64. Defendant breached that duty by knowingly and willfully failing to report their reasonable suspicions of Mr. Sewast's abuse of children in their care.
65. As a direct and indirect result of this conduct, Plaintiff suffered injuries and damages described herein.
66. Accordingly, Plaintiff demands judgment against the Defendant on its eighth cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

WHEREFORE, Plaintiff demands judgment in against the Defendants in an amount which exceeds the monetary jurisdictional limits of all lower New York State Courts but does not exceed the monetary jurisdictional limits of the New York State Supreme Court.

Plaintiff further demands such other, further and different relief as to the Court may seem just, proper, together with the costs and disbursements of this action.

Dated: Buffalo, NY
August 14, 2019



Frank M. Bogulski, Esq.
Attorney for Plaintiff

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286 Delaware Avenue, Suite B
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